

November 10, 2021

**SUBMITTED VIA CFTC PORTAL**

Secretary of the Commission  
Office of the Secretariat  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the FBUSTER Contract

Dear Sir or Madam,

Pursuant to Section 5c(c) of the Commodity Exchange Act and Section 40.2(a) of the regulations of the Commodity Futures Trading Commission, KalshiEX LLC (Kalshi) hereby notifies the Commission that it is self-certifying the FBUSTER contract (Contract).

Along with this letter, Kalshi submitted the following documents:

- A concise explanation and analysis of the Contract;
- Certification;
- Appendix A with the Contract's Terms and Conditions;
- Confidential Appendices with further information; and
- A request for FOIA confidential treatment.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Elie Mishory  
Chief Regulatory Officer  
KalshiEX LLC  
emishory@kalshi.com

**KalshiEX LLC**

**New Contract Submission: Will the filibuster cloture vote requirement be lowered?**

**Ticker: FBUSTER**

**Kalshi Contract Category: Political Decision**

**Filibuster Change**

**November 10, 2021**

**CONCISE EXPLANATION AND ANALYSIS OF THE PRODUCT AND ITS COMPLIANCE WITH APPLICABLE PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION'S REGULATIONS THEREUNDER**

Pursuant to Commission Rule 40.2(a)(3)(v), the following is a concise explanation and analysis of the product and its compliance with the Act, including the relevant Core Principles, and the Commission's regulations thereunder.

**I. Introduction**

The FBUSTER Contract is a contract relating to whether the U.S. Senate filibuster rules will be modified. After careful analysis, Kalshi (hereafter referred to as “Exchange”) has determined that the Contract complies with its vetting framework, which has been reviewed by the CFTC and formed part of the Exchange’s application for designation as a Contract Market (“DCM”) that was approved by the Commission.

Current U.S. filibuster rules require a three-fifths majority of the U.S. Senate (normally corresponding to 60 members) are needed for “cloture”, i.e. to end debate on a bill and send it to the floor for a final vote. Such rules previously allowed filibustering for all Senate actions, but the filibuster was amended to exclude non-Supreme Court judge nominations in November 2013 before the exemption was expanded to encompass Supreme Court nominees in 2017<sup>1</sup>. Certain bills like budget reconciliation bills (which have special rules and limitations) are also exempt from the filibuster. Changing the filibuster rules would have dramatic consequences for the likelihood of a debt ceiling standoff, as well as the passage of other major bills. The Contract is designed to help Members exposed to Congressional action to hedge against gridlock.

Further information about the Contract, including an analysis of its risk mitigation and price basing utility, as well as additional considerations related to the Contract, is included in Confidential Appendices B, C, and D.

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<sup>1</sup> <https://www.rollcall.com/2020/10/15/if-you-dont-like-the-supreme-court-blame-harry-reid/>

Pursuant to Section 5c(c) of the Act and CFTC Regulations 40.2(a), the Exchange hereby certifies that the listing of the Contract complies with the Act and Commission regulations under the Act.

**General Contract Terms and Conditions:** The Contract operates similar to other binary contracts that the Exchange lists for trading. The minimum price fluctuation is \$0.01 (one cent). Price bands will apply so that Contracts may only be listed at values of at least \$0.01 and at most \$0.99. Further, the Contract is sized with a one-dollar notional value and has a minimum price fluctuation of \$0.01 to enable Members to match the size of the contracts purchased to their economic risks. The Exchange has further imposed position limits (defined as maximum loss exposure) of \$25,000 USD on the Contract. As outlined in Rule 5.12 of the Rulebook, trading shall be available at all times outside of any maintenance windows, which will be announced in advance by the Exchange. Members will be charged fees in accordance with Rule 3.6 of the Rulebook. Fees are charged in such amounts as may be revised from time to time to be reflected on the Exchange's Website. Additionally, as outlined in Rule 7.2 of the Rulebook, if any event or any circumstance which may have a material impact on the reliability or transparency of a Contract's Source Agency or the Underlying related to the Contract arises, Kalshi retains the authority to designate a new Source Agency and Underlying for that Contract and to change any associated Contract specifications after the first day of trading. That new Source Agency and Underlying would be objective and verifiable. Kalshi would announce any such decision on its website. All instructions on how to access the Underlying are non-binding and are provided for convenience only and are not part of the binding Terms and Conditions of the Contract. They may be clarified at any time. Furthermore, the Contract's payout structure is characterized by the payment of an absolute amount to the holder of one side of the option and no payment to the counterparty. During the time that trading on the Contract is open, Members are able to adjust their positions and trade freely. After trading on the Contract has closed, the Expiration Value and Market Outcome are determined. The market is then settled by the Exchange, and the long position holders and short position holders are paid according to the Market Outcome. In this case, "long position holders" refers to Members who purchased the "Yes" side of the Contract and "short position holders" refers to Members who purchased the "No" side of the Contract. If the Market Outcome is "Yes," meaning that the threshold for cloture has been reduced for at least one class of legislative action whose threshold to invoke cloture at time of Issuance is 3/5ths, then the long position holders are paid an absolute amount proportional to the size of their position and the short position holders receive no payment. If the Market Outcome is "No," then the short position holders are paid an absolute amount proportional to the size of their position and the long position holders receive no payment. Specification of the circumstances that

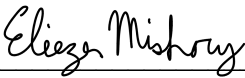
would trigger a Market Outcome of “Yes” are included below in the section titled “Payout Criterion” in Appendix A.

**CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE  
ACT, 7 U.S.C. § 7A-2 AND COMMODITY FUTURES TRADING COMMISSION RULE  
40.2, 17 C.F.R. § 40.2**

Based on the above analysis, the Exchange certifies that:

- The Contract complies with the Act and Commission regulations thereunder.
- This submission (other than those appendices for which confidential treatment has been requested) has been concurrently posted on the Exchange's website at <https://kalshi.com/regulatory/filings>.

Should you have any questions concerning the above, please contact the exchange at [ProductFilings@kalshi.com](mailto:ProductFilings@kalshi.com).

  
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By: Eliezer Mishory  
Title: Chief Regulatory Officer  
Date: November 10, 2021

**Attachments:**

Appendix A - Contract Terms and Conditions

Appendix B (Confidential) - Further Considerations

Appendix C (Confidential) - Source Agency

Appendix D (Confidential) - Compliance with Core Principles

**APPENDIX A – CONTRACT TERMS AND CONDITIONS**

**TERMS OF CONTRACTS TRADED ON KALSHI**

**Official Product Name: Will the filibuster cloture vote requirement be lowered?**

**Ticker and Rulebook: FBUSTER**

## FBUSTER

**Scope:** These rules shall apply to the FBUSTER contract.

**Underlying:** The Underlying for this Contract is U.S. Senate rules and precedent according to Senate.gov and Congress.gov. Revisions to the Underlying made after Expiration will not be accounted for in determining the Expiration Value.

**Instructions:** Senate rules are available at <https://www.rules.senate.gov/rules-of-the-senate> with the most likely modified section being Rule XXII. Congress.gov also contains the record of Senate votes on individual pages of nominations and bills, e.g. <https://www.congress.gov/nomination/115th-congress/55> which may contain roll call votes to amend Senate precedent. These instructions on how to access the Underlying are provided for convenience only and are not part of the binding Terms and Conditions of the Contract. They may be clarified at any time.

**Source Agency:** The Source Agency is the Library of Congress and the U.S. Senate.

**Type:** The type of Contract is a Binary Contract.

**Issuance:** After the initial Contract, Contract iterations will be listed on an as-needed basis at the discretion of the Exchange and corresponding to the risk management needs of Members.

**Date:** <date> refers to a calendar <date> specified by Kalshi. Kalshi may list iterations of the Contract corresponding to different statistical periods of <date>, ranging from November 13, 2021 to December 31, 2024.

**Payout Criterion:** The Payout Criterion for the Contract encompasses the Expiration Values that include a change in U.S. Senate rules or precedent that lowers the threshold for cloture for any legislative action whose threshold for cloture at time of Issuance is three-fifths of all Senators duly chosen and sworn.

Modifications to budget reconciliation rules are not encompassed in the Payout Criterion.

### Examples and Guidance:

Below is excerpted the invocation of the “nuclear option” in 2013, used for the nomination of Patricia Ann Millet (details available here:

<https://www.congress.gov/nomination/113th-congress/527> ). In the below screenshot, earlier actions are above later actions (though the web page allows you to choose this ordering and it



may appear differently for others). Senator Reid raises a point of order to modify the precedent under rule XXII that cloture for non-Supreme Court nominees should be held by majority vote. The Chair of the Senate rules against this motion. Senator Reid appeals that ruling, and the Senate votes 48 yeas to 52 nays to uphold the Chair's ruling, meaning that the Chair's ruling is not sustained. A second appeal by Senator McConnell to overturn the previous vote is not sustained. As a consequence, the Chair rules (sixth row), that “**under the precedent set by the Senate today, the threshold for cloture on nominations, not including those to the Supreme Court of the United States, is now a majority**”. Had such an action occurred between Issuance and <date>, then the market would resolve to Yes. Had the original Ruling of the Chair been upheld, or Senator McConnell's appeal succeeded, then that outcome would not have been encompassed by the Payout Criterion because his appeal was to overturn the Chair's change.

|            |  |
|------------|--|
| 11/21/2013 | Point of order made by Senator Reid that the vote on cloture, under rule XXII of the Standing Rules of the Senate for all nominations other than for Supreme Court, is by majority vote in Senate.   |
| 11/21/2013 | Ruling of the Chair that the point of order raised by Senator Reid with respect to the majority vote required on cloture motions was not sustained.  |
| 11/21/2013 | Motion by Senator Reid to appeal the ruling of the chair agreed to, the question being, "Shall the decision of the Chair stand as the judgment of the Senate" determined by Yea-Nay Vote. 48 - 52. <a href="#">Record Vote Number: 242.</a>                                    |
| 11/21/2013 | Point of order by Senator McConnell that nominations are fully debatable under the Rules of the Senate unless three-fifths of Senators chosen and sworn have voted to bring debate to a close in Senate.   |
| 11/21/2013 | Ruling of the Chair, under the precedent set by the Senate today, the threshold for cloture on nominations, not including those to the Supreme Court of the United States, is now a majority, and held the point of order raised by Senator McConnell not sustained.           |
| 11/21/2013 | Motion by Senator McConnell to appeal the ruling of the chair not agreed to, the question being, "Shall the decision of the Chair stand as the judgment of the Senate" determined by Yea-Nay. 52 - 48. <a href="#">Record Vote Number: 243.</a> Ruling of the Chair sustained. |

Below is excerpted from the confirmation vote for Neil Gorsuch to become a Justice of the Supreme Court. On April 6, 2017, the Chair of the Senate ruled that the precedent from November 21, 2013 (mentioned previously) did not apply to Supreme Court justice confirmation votes. The ruling was appealed and the Senate voted 52-48 that the judgment of the Chair was not the judgment of the Senate. Thus, the precedent from November 21, 2013 (lowering the cloture threshold to a majority vote from 3/5ths) applied to Supreme Court justices. The details are available here: <https://www.congress.gov/nomination/115th-congress/55>. Had such an action occurred between Issuance and <date>, then the market would resolve to Yes.

|            |  |
|------------|--|
| 04/06/2017 | Point of order by Senator McConnell that the vote on cloture, under the precedent set on November 21, 2013, for all nominations is by majority vote in Senate.   |
| 04/06/2017 | Ruling of the Chair that the precedent of November 21, 2013 did not apply to nominations to the Supreme Court; those nominations are considered under plain language of Rule XXII; the point of order raised with respect to the majority vote for all nominations is not sustained. |
| 04/06/2017 | Senator McConnell appealed the ruling of the chair.  |
| 04/06/2017 | Motion by Senator Schumer to adjourn until 5 p.m. not agreed to by Yea-Nay Vote. 48 - 52. <a href="#">Record Vote Number: 108.</a>   |
| 04/06/2017 | Ruling of the Chair not sustained, the question being "Shall the decision of the Chair stand as the judgement of the Senate" determined by Yea-Nay Vote. 48 - 52. <a href="#">Record Vote Number: 109.</a>   |

The below is Rule XXII of the Senate Rules. If the term “three-fifths” was lowered to a value that is less than “three-fifths” between Issuance and <date>, then that would be encompassed in the Payout Criterion.

"Is it the sense of the Senate that the debate shall be brought to a close?" And if that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn -- except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting -- then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

**Minimum Tick:** The Minimum Tick size for the referred Contract shall be \$0.01.

**Position Limit:** The Position Limit for the \$1 referred Contract shall be \$25,000 per Member.

**Last Trading Date:** The Last Trading Date of the initial iteration of the Contract will be the same day as the Expiration Date. The Last Trading Time will be the same as the Expiration time.

**Settlement Date:** The Settlement Date of the initial iteration of the Contract shall be the day after the Expiration Date, unless the Market Outcome is under review pursuant to Rule 7.1.

**Expiration Date:** The Expiration Date of the Contract shall be the sooner of one day following a change in U.S. Senate rules or precedent that lowers the threshold for cloture for any legislative action whose threshold for cloture at time of Issuance is three-fifths of all Senators duly chosen and sworn or one day following <date>.

**Expiration time:** The Expiration time of the initial Contract iteration shall be 10:00 AM ET.

**Settlement Value:** The Settlement Value for this Contract is \$1.00.

**Expiration Value:** The Expiration Value is the value of the Underlying for the statistical period between Issuance and <date> as documented by at least one of the Source Agencies on the Expiration Date at the Expiration time.

**Contingencies:** Before Settlement, Kalshi may, at its sole discretion, initiate the Market Outcome Review Process pursuant to Rule 6.3(c) of the Rulebook. Additionally, as outlined in Rule 7.2 of the Rulebook, if any event or any circumstance which may have a material impact on the reliability or transparency of a Contract’s Source Agency or the Underlying related to the

Contract arises, Kalshi retains the authority to designate a new Source Agency and Underlying for that Contract and to change any associated Contract specifications after the first day of trading.